

with respondent and that claimant has failed to prove that she provided respondent with timely notice of accidental injury.

Claimant testified that she injured her right knee at work on November 24, 1997. She was checking on a pan of turkeys in the oven when she turned, felt her knee pop and she went down.

Respondent points to several inconsistencies in the record in support of its position that the injury is not work related. Among these inconsistencies respondent points to is the fact that the claimant continued to work the day of the alleged accident and worked November 25, 26, 28, 29, 30 and December 1. Also, she did not seek medical treatment until December 2, 1997 when she went to her own family physician, Dr. L. H. James. Furthermore, his office notes do not reflect that claimant described her injury as work related.

Claimant testified that she promptly advised her supervisor, Jack Williams, of her injury. That testimony is controverted by the other witnesses, including Mr. Williams himself.

Claimant admitted that she was aware that if something happened to her on the job that she was to fill out an incident report. In fact, claimant had filled out no less than 17 incident reports while working for respondent. This included minor incidents that did not require medical attention such as one when another employee bumped into her, and another when she caught her foot in her pant leg and lost her balance. It does not follow that if claimant suffered injury to her knee as she described, she would not have filled out an incident report for this accident. This is particularly true when claimant admittedly thought that she was injured at the time.

In addition, claimant admitted that she was aware the employer had an authorized doctor for workers compensation. She had been through an incident a year earlier where she received treatment from the authorized doctor. Nevertheless, in this instance claimant did not ask her employer to authorize treatment, nor did she go to the company doctor. Instead, she went to her family physician and turned the bill in to her private health insurance carrier. Claimant testified that she told her doctor that she had hurt her knee at work but that he didn't put it down in his records as work related.

In her brief, claimant argues that the Board should affirm the Administrative Law Judge's decision because the Judge had the opportunity to personally observe the witnesses testify and assess their demeanor and credibility. Generally, the Appeals Board does give deference to the Administrative Law Judge's determination of witnesses' credibility. In this instance, however, the greater weight of the evidence does not support claimant's contention that her knee injury occurred at work or that she gave timely notice of her accidental injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated February 26, 1998 entered by Administrative Law Judge John D. Clark is reversed.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Ronald J. Laskowski, Topeka, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director